

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHMAN, BERENBAUM &
ASSOCIATES, L.L.C.; CHARLES I.
RICHMAN; BLAKE L. BERENBAUM
and ELLIS COOK,

Plaintiffs

vs.

CAROLINA CASUALTY INSURANCE
COMPANY; and REUBEN KLUGMAN,
INDIVIDUALLY AND AS TRUSTEE OF
THE REUBEN KLUGMAN TRUST,

Defendants

No. 02-CV-3195

**CAROLINA’S MOTION TO STRIKE PORTIONS OF RESPONSE MEMORANDUM
THAT ARE UNSUPPORTED BY ANY EVIDENCE**

Defendant/Counter-Plaintiff, Carolina Casualty Insurance Corporation (“Carolina”), hereby moves to strike portions of the Memorandum filed by Plaintiffs/Counter-Defendants, Richman, Berenbaum & Associates, L.L.C., Charles I. Richman, Blake L. Berenbaum and Ellis Cook (hereinafter, collectively, “Richman, Berenbaum”) that are unsupported by any evidence.

In support of its motion to strike Statement of Facts ¶¶12, 13, 14, 16, 20, 21, 22, 23, 24, 26; and “Conclusion,” ¶¶4, 10, 15, 16, 19, , 24, 25, 26, and 27, Carolina submits the attached Memorandum of Law In Support of Its Motion To Strike Portions of Response Memorandum That Are Unsupported by Any Evidence.

WHEREFORE, Carolina Casualty Company respectfully requests that this Honorable Court strike those portions of Plaintiffs/Counter-Defendants’ Memorandum which are

unsupported by any evidence, and award such other relief as this Court deems appropriate.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

By: _____
STEVEN J. POLANSKY, ESQUIRE
Attorney for Defendant Carolina Casualty Insurance
Corporation

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Defendants

No. 02-CV-3195

**CAROLINA’S MEMORANDUM OF LAW IN SUPPORT OF
ITS MOTION TO STRIKE PORTIONS OF RESPONSE MEMORANDUM THAT ARE
UNSUPPORTED BY ANY EVIDENCE**

Defendant/Counter-Plaintiff, Carolina Casualty Insurance Corporation (“Carolina”), in support of its motion to strike portions of the Memorandum filed by Plaintiffs/Counter-Defendants, Richman, Berenbaum & Associates, L.L.C., Charles I. Richman, Blake L. Berenbaum and Ellis Cook (hereinafter, collectively, “Richman, Berenbaum”) that are unsupported by any evidence, states as follows:

In Richman, Berenbaum’s Memorandum submitted in opposition to Carolina’s motion for summary judgment, Richman, Berenbaum makes statements completely unsupported by any evidence, or by affidavit. Specifically, the following paragraphs contain such unsupported statements: Statement of Facts ¶¶12, 13, 14, 16, 20, 21, 22, 23, 24, 26; and “Conclusion,” ¶¶4, 10, 15, 16, 19, , 24, 25, 26, and 27.

Pursuant to Fed.R.Civ.P. 56, Richman, Berenbaum must set forth facts that would be admissible at trial. As such, Richman, Berenbaum may not rely upon bare assertions, conclusory allegations or suspicions, but must set forth specific facts and evidence to demonstrate that there is a genuine issue for trial. *See, e.g., Coregis Ins. Co. v. Wheeler*, 24 F.Supp.2d. 475, 477 (E.D.Pa. 1998). As Richman, Berenbaum has made numerous statements in its Memorandum, completely unsupported by any evidence, Carolina submits that such statements should be stricken.

WHEREFORE, Carolina Casualty Company respectfully requests that this Honorable Court strike those portions of Plaintiffs/Counter-Defendants' Memorandum which are unsupported by any evidence, and award such other relief as this Court deems appropriate.

Respectfully submitted:

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

By: _____
STEVEN J. POLANSKY, ESQUIRE
Attorney for Defendant Carolina Casualty Co.

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RICHMAN; BLAKE L. BERENBAUM;)
and ELLIS COOK,)

Plaintiffs)

vs.)

CAROLINA CASUALTY INSURANCE)
COMPANY; REUBEN KLUGMAN,)
INDIVIDUALLY AND AS TRUSTEE OF)
THE REUBEN KLUGMAN TRUST; and)
JEFFREY L. RUDNICK;)

Defendants)

No. 02-CV-3195

ORDER

AND NOW, on this _____ day of _____, 2003, upon consideration of Defendant Carolina Casualty Insurance Company's Motion to Strike Portions of Response Memorandum that are Unsupported by any evidence;;

It is hereby **ORDERED** that the this Honorable Court strike the portions of the response memorandum that are unsupported by any evidence; and such other relief as the Court deems appropriate.

BY THE COURT:

J.